



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,882	08/24/2001	Mark Plaia		3541

7590 11/15/2006
MARK PLAIA
9741 SW MCDONALD STREET
TIGARD, OR 97224

EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/938,882	PLAIA ET AL.	
	Examiner	Art Unit	
	Paul B. Prebilic	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 116-136 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 116-136 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The abstract of the disclosure is objected to because it is not directed to the presently claimed invention. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 117-123, 126, 128-130, and 132-135 are objected to because of the following informalities:

With regard to claim 117-121, 123, 126, 128, 130, 133, and 135, improper alternative language is used that does not comply with the provisions of MPEP 2173.05(h). For example, on the last line of claim 117, the “and” should be “or” to be proper; see MPEP 2173.05(h) that is incorporated herein by reference. Claims 118-121, 123, 126, 128, 130, 133, and 135 each has the same or a similar informality as claim 117.

With regard to claims 122 and 129, line 2 of each, the word “disposed” does not appear to be proper and would be better written as ---disposable---.

With regard to claim 132, the language “structure holding” is not clear and would be better understood if changed to ---structure for holding---.

With regard to claim 134, lines 8-10, the claim language is grammatically awkward because “against” is not clearly associated with some structure.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3738

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 116-121 and 123-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillstead (US 4,921,484) in view of Narciso, Jr. (US 5,419,760) or Hess (US 5,411,466) or Gillis (US 5,222,969). Hillstead discloses a combination of a plaque removing instrument and suggest the use of a stent to line the treated area but does not clearly disclose a stent or liner for the treated area; see the figures, column 1, lines 5-14 and column 5, lines 35-37. However, Narciso (see Figure 3, column 4, lines 6-9, and column 3, lines 53-62), Hess (see column 3, lines 15-40) and Gillis (see the abstract) all independently teach that is was known to put a liner, such as a stent, over an area where plaque as been removed. Therefore, it is the Examiner's position that it would have been considered *prima facie* obvious to put a liner over the treated area of Hillstead for the same reasons that Hillstead and the secondary references suggest doing the same or in order to prevent restenosis.

Claims 122 and 133-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillstead, Narciso, Hess, and Gillis as applied to claims 116-121 and 123-132 above, and further in view of Lee (US 5,123,917). Hillstead fails to disclose putting a stent within a continuous lining as claimed. However, Lee teaches that it was known to do so; see the abstract and figures. Therefore, it is the Examiner's position that it would have been obvious to use a graft with the stent of Hillstead as modified by Narciso, Hess, or Gillis for the same reasons that Lee uses the same or to better prevent restenosis by blocking intima regrowth into the vessel.

Response to Arguments

Applicant's arguments with respect to claims 116-135 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Art Unit: 3738

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Prebilic
Primary Examiner
Art Unit 3738